

110 FERC ¶ 61,300  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Entergy Louisiana, Inc.	Docket Nos. ER05-188-000 and ER05-188-001
Entergy Services, Inc.	Docket Nos. ER05-189-000 and ER05-189-001
Perryville Energy Partners, L.L.C.	Docket Nos. ER05-191-000 and ER05-191-001

ORDER CONDITIONALLY ACCEPTING INTERCONNECTION AGREEMENT  
AND ESTABLISHING HEARING PROCEDURES

(Issued March 22, 2005)

1. In this order, we are considering three filings made by Entergy Services, Inc., (Entergy Services), Entergy Louisiana, Inc. (Entergy Louisiana), and Perryville Energy Partners (Perryville). The filings are the result of the sale by Perryville to Entergy Louisiana of the Perryville generator near Perryville, Louisiana.<sup>1</sup> Perryville is retaining ownership of the related transmission facilities (Interconnection Facilities). This order benefits customers because it ensures that contracts between the parties are just and reasonable.
2. We accept the Notice of Termination of Interconnection and Operating Agreement (IOA) and Generator Imbalance Agreement (GIA) between Entergy Louisiana and Perryville's parent company, Cleco Midstream Resources, LLC (Cleco) in Docket No. ER05-189-000. We also accept the executed Interconnection Agreement (IA) filed by Entergy Louisiana in Docket No. ER05-188-000 setting forth the terms and conditions under which Perryville's step-up transformers and related Interconnection Facilities governed by the IA will serve to interconnect the generator to the Entergy transmission system. We also accept, subject to conditions discussed in the body of this order, the agreement (Transmission Service Agreement) setting forth the rates, terms, and

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<sup>1</sup> On July 12, 2004, in Docket No. EL04-118-000, Perryville and Entergy Louisiana filed on behalf of Entergy Louisiana a "Petition for Declaratory Order Disclaiming Jurisdiction" under section 203 of the Federal Power Act over Perryville's sale of the generation-only facility to Entergy Louisiana. The Commission issued an order disclaiming jurisdiction over the transaction.

conditions of the interconnection service, a type of transmission delivery service, to be provided by Perryville to Entergy Louisiana, as filed by Perryville in Docket No. ER05-191-000. We will grant to Perryville the requested waiver of the requirement under Order No. 888<sup>2</sup> to file an Open Access Transmission Tariff (OATT). However, as in other cases where we have waived the requirement to file an OATT, we will require Perryville to file an OATT as soon as Perryville begins to provide interconnection service to any customer, including Entergy Louisiana. We will also grant Perryville waiver of Order No. 889.<sup>3</sup> We also establish hearing procedures to determine the justness and reasonableness of Perryville's proposed interconnection service charge.

## I. Background

### A. Docket Nos. ER05-188-000 and ER05-188-001

3. On November 5, 2004, Entergy Louisiana submitted for filing an executed IA<sup>4</sup> between Entergy Louisiana and Perryville. This agreement sets forth the requirements, terms and conditions under which Perryville's Interconnection Facilities will interconnect to the Entergy transmission system. Entergy Louisiana states that while Perryville will sell the generating facility to Entergy Louisiana, Perryville will remain the owner and operator of the Interconnection Facilities, which are located in a substation adjacent to the generator, and will provide delivery service to Entergy.

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<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>3</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs., Preambles, July 1996-December 2001 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (1997), FERC Stats & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>4</sup> Original Service Agreement No. 381 under Entergy Services, Inc.'s FERC Electric Tariff, Second Revised Volume No. 3.

4. Entergy Louisiana contends that the IA is a system-to-system interconnection agreement and is modeled after other system-to-system agreements on file with the Commission. It argues that the *pro forma* generator interconnection agreement required by Order No. 2003<sup>5</sup> is not applicable here because Perryville will not own any generating facilities after it sells the Perryville generator to Entergy.

5. Entergy Louisiana requests that the IA become effective when the sale of the Perryville generating facility becomes effective. Entergy Louisiana further requests waiver of section 35.3 of the Commission's regulations,<sup>6</sup> which requires all rate schedules to be posted at least 60 days prior to their effective date. Entergy Louisiana makes this waiver request to coincide with its proposed effective date.

**B. Docket Nos. ER05-189-000 and ER05-189-001**

6. On November 5, 2004, Entergy Services filed a Notice of Termination of an IOA and GIA between Entergy Louisiana and Cleco.<sup>7</sup> The IOA and GIA are under Entergy Operating Companies' FERC Electric Tariff, First Revised Volume No. 3, Original Service Agreement No. 102 and Supplement No. 1.<sup>8</sup>

**C. ER05-191-000 and ER05-191-001**

7. On November 5, 2004, Perryville filed the Transmission Service Agreement between itself and Entergy Louisiana. Perryville intends to provide transmission service to Entergy Louisiana under that contract, and will charge Entergy Louisiana a Monthly Interconnection Service Charge that is a levelized fixed rate (a rate that does not vary based on actual usage). The interconnection service charge will be \$94,254/month, based on a levelized revenue requirement of \$1,131,045 per year. Perryville states that the proposed interconnection charge was derived using an 11.5 percent return on equity, a 7.33 percent cost of debt, a 9.42 percent weighted average cost of capital, and a capital structure consisting of 50 percent debt and 50 percent equity. Perryville's rate base is

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<sup>5</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*.

<sup>6</sup> 18 C.F.R. § 35.3 (2004).

<sup>7</sup> Perryville is a wholly-owned subsidiary of Cleco.

<sup>8</sup> The IOA and GIA were filed with the Commission on May 30, 2000 and were accepted by the Commission on July 17, 2000 in Docket No. ER00-2633-000.

based on the projected book value of the Interconnection Facilities as of July 31, 2005.<sup>9</sup> Perryville states that, in designing its proposed rate, it used a hypothetical capital structure based on its assumed recapitalization when it emerges from bankruptcy.

8. Perryville requests that the Commission grant it waivers of the requirement under Order No. 888 to file an OATT and the requirement under Order No. 889 to establish an Open Access Same-time Information System (OASIS). Perryville states that the only jurisdictional facilities it owns are the Interconnection Facilities, which are only incidental facilities necessary to connect the Perryville generator to Entergy Louisiana's transmission system. According to Perryville, these are limited and discrete facilities in and around the substation adjacent to the generator and do not form part of any integrated electricity grid, so under the Commission precedent regarding waiver, Perryville qualifies for waiver. Perryville also states that the interconnection service that Perryville has agreed to provide can and will be provided only to the Perryville generator. Perryville states that because of the location of the Interconnection Facilities, no other generator could request transmission service from Perryville over the Interconnection Facilities. Thus, according to Perryville, it would be a waste of resources for Perryville to file an OATT or establish an OASIS.

9. Perryville also requests waiver of a number of other Commission regulations under section 35.12 because it contends that these regulations are burdensome and costly to comply with if it is providing services to only one customer over minimal facilities. These specific waiver requests are discussed below.

10. Finally, Perryville requests that the Commission accept the Transmission Service Agreement to become effective as of the date that Perryville's sale of the generator to Entergy Louisiana becomes effective.

#### **D. Deficiency Letter**

11. On December 29, 2004, Commission staff issued a deficiency letter<sup>10</sup> to Perryville concerning all three dockets, requesting: (1) a line diagram of the Perryville facility, clearly showing the generator, Interconnection Facilities, and the points of

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<sup>9</sup> Perryville notes that it filed for bankruptcy on January 28, 2004 and that because of the bankruptcy, the level of local property taxes used in calculating the revenue requirement may change. Perryville states that it will make a compliance filing with the Commission if a recalculation of the monthly interconnection charge becomes necessary.

<sup>10</sup> The staff issued the deficiency letter for Docket Nos. ER05-188-000, ER05-189-000 and ER05-191-000.

interconnection between the facilities owned by Perryville and those owned by Entergy; (2) documentation to substantiate that the negotiations between Perryville and Entergy resulting in the arrangements described in the three filings were at arms' length; (3) an explanation as to whether the Perryville generating facility, once it is owned by Entergy Louisiana, would be subject to the same generator imbalance penalties and regulation service charges imposed upon other generating units connected to Entergy's transmission system; (4) a discussion of Entergy Louisiana's statement in Docket No. ER05-188-000 that the IA is a "system-to-system" agreement, identifying the system-to-system agreements on which this filing is modeled and providing a detailed explanation as to how the IA is similar to those agreements; (5) a description of the working arrangements between Entergy and Perryville in the ongoing day-to-day operations of the interconnection and generating facilities and a description of the extent to which Entergy would have control over the Interconnection Facilities owned by Perryville; and (6) cost support to justify the projected book value of the Interconnection Facilities, general and administrative expense and allocations, operations and maintenance expenses, and inflation factor.

12. On January 21, 2005, Perryville, Entergy Services and Entergy Louisiana filed a joint response to the staff's deficiency letter.

#### **E. Notice of Filing and Pleadings**

13. Notice of the November 5, 2004 filings was published in the *Federal Register*, 69 Fed. Reg. 67,717 (2004), with comments, protests and interventions due on or before November 26, 2004.

14. On November 24, 2004, Occidental Chemical Corporation (Occidental) filed motions to intervene and protests in Docket Nos. ER05-188-000 and ER05-191-000. On November 26, 2004, Calpine Corporation (Calpine) filed a timely motion to intervene and comments in all three dockets, and Tractebel Energy Marketing, Inc. (Tractebel) filed a motion to intervene and protest in Docket No. ER05-188-000. On December 7, 2004, the Louisiana Public Service Commission (Louisiana Commission) filed a late motion to intervene in Docket No. ER05-191-000. On December 13, 2004, Entergy Louisiana filed an answer to the protests of Occidental, Calpine, and Tractebel in Docket No. ER05-188-000. Also, on December 13, 2004, Perryville filed an answer to Occidental's protest in Docket No. ER05-191-000.

15. On January 28, 2005, notice of the response to the deficiency letter was published in the *Federal Register*, 70 Fed. Reg. 5,991 (2005), with comments, interventions and protests due on or before February 11, 2005.

16. On February 11, 2005, Union Power Partners, L.P. (Union Power) filed a timely motion to intervene in all three dockets raising no substantive issues. On that same date, Occidental filed a motion to intervene and protest in all three dockets. On February 28, 2005, Perryville and Entergy Louisiana filed a motion for leave to answer and answer in opposition to the Protest filed on February 11, 2005, by Occidental. Finally, on March 3, 2005, Occidental filed a limited response to the answer of Perryville and Entergy Louisiana filed on February 28, 2005.

## II. Discussion

### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385(a)(2)(2004), prohibits an answer to protests unless otherwise ordered by the decisional authority. We will accept the answers of Entergy Louisiana and Perryville because they provided information that assisted us in our decision-making process. Also, we will grant the untimely motion to intervene of the Louisiana Commission given its interests, the early stage of the proceeding, and the absence of undue prejudice or delay.

### B. Affiliation between Perryville and Entergy Louisiana

19. Occidental<sup>11</sup> states that the Commission should either reject the agreements filed in Docket Nos. ER05-188-000 and ER05-191-000, set the agreements for hearing, or issue a deficiency letter because Entergy Louisiana has failed to establish that the Agreements are just and reasonable, as required under section 205 of the Federal Power Act.<sup>12</sup> Occidental challenges Entergy Louisiana's assertion that the Agreements resulted from arms' length negotiations, and says that we should scrutinize the agreements as affiliate transactions that could be subject to reciprocal dealing or affiliate abuse. Occidental argues that the common interests of Perryville and Entergy Louisiana in the sale of the Perryville generator make their relationship similar to the relationship between prospective parties to a merger. For this reason, the Commission should treat them as "related" parties and subject their contractual arrangement to heightened scrutiny.<sup>13</sup> In

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<sup>11</sup> Occidental filed two protests and one response to the answer of Perryville and Entergy Louisiana.

<sup>12</sup> 16 U.S.C. 824d (2000).

addition, Occidental asserts that the Commission must be provided with adequate details of the Perryville transaction to ensure that the transaction does not harm customers or wholesale competition.

20. Entergy Louisiana asserts that Perryville is not an affiliate of Entergy Louisiana, but is rather an indirect wholly owned subsidiary of Cleco, and that the IA is an arms' length transaction between two unaffiliated entities. Similarly, Perryville states in several of its pleadings that Entergy Louisiana does not control, is not controlled by, and is not under common control with Perryville. Perryville argues that the Commission would have to treat as "affiliates" parties to a wide range of contracts if it adopted Occidental's argument.

21. The Commission is satisfied that Perryville and Entergy Louisiana are not affiliated entities, and that the agreements here do not need to be subjected to any additional scrutiny for affiliate abuse. While Perryville and Entergy Louisiana have a shared interest in seeing the Purchase and Sale Agreement for the Perryville generator succeed, we do not agree that this shared interest in and of itself requires the heightened scrutiny we give to contracts between affiliates. The cases cited by Occidental are market-based rates cases, but the instant filings are not. The Commission has never said that all contracts between entities planning business deals must be subjected to heightened scrutiny.

### C. Control of Interconnection Facilities

22. In its protest to the initial filing in Docket No. ER05-191-000, Occidental argues that it cannot be determined from the Transmission Service Agreement whether Perryville will retain control of the Interconnection Facilities. Occidental states that the Transmission Service Agreement makes "bald assertions" without distinguishing between the functions and authorities of Perryville and Entergy Louisiana. Occidental also states that the contract in which Entergy Louisiana is designated as "maintenance contractor" means that Entergy Louisiana has not only the incentive but the ability to control the facilities. For this reason, Occidental argues that this arrangement requires further Commission scrutiny to determine if the Transmission Service Agreement is just and reasonable.

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<sup>13</sup> In support of this view, Occidental cites *New England Power Company*, 88 FERC ¶ 61,292 at 61,889 (1999); *Western Resources, Inc.*, 94 FERC ¶ 61,050 at 61,246 (2001), and *Delmarva Power & Light Co.*, 76 FERC ¶ 61,331 at 62,583 (1996) (forbidding companies to transact with each other or their affiliates without Commission approval during the pendency of their merger proceeding).

23. In its response to Occidental's protest, Perryville states that the "bald assertions" that Occidental discusses are contractual provisions that obligate Perryville and limit the rights of Entergy Louisiana.<sup>14</sup> Perryville states that the plain meaning of the provisions of the Transmission Service Agreement that are cited by Occidental is that Perryville retains control of the Interconnection Facilities. Perryville states that Occidental has provided no evidence that the terms of the Transmission Service Agreement are fraudulent, or that Perryville and Entergy Louisiana would not abide by them.

24. In the response to the staff deficiency letter, Entergy Louisiana states that Perryville will maintain "ultimate control and decision-making authority" over the Interconnection Facilities at all times. Entergy Louisiana further states that it will report to Perryville when performing work under the maintenance contract. After the sale of the generator, Perryville states that it will exercise the same level of control over the Interconnection Facilities that it now has.<sup>15</sup>

25. In its February 11, 2005 protest, Occidental states that this response does not resolve whether Entergy Louisiana will exercise control over the Interconnection Facilities. Specifically, Occidental asks that the Commission require Perryville and Entergy Louisiana to file the contract under which Entergy Louisiana will perform maintenance of the Interconnection Facilities. Occidental further requests that the Commission either reject the Transmission Service Agreement and the IA or alternatively, set them for hearing.

26. Perryville and Entergy Louisiana respond that the plain meaning of the Transmission Service Agreement is that Perryville retains control of the Interconnection Facilities. Contrary to Occidental's argument, Perryville and Entergy Louisiana state that under the Commission's long-standing precedent, the Maintenance Agreement between Perryville and Entergy Louisiana is not required to be filed with the Commission.<sup>16</sup> Nonetheless, Perryville and Entergy Louisiana provide the Maintenance Agreement for

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<sup>14</sup> Perryville cites sections 6.3.2 and 6.3.4 of the Transmission Service Agreement that state that it shall retain sole and full operational control of the interconnection facilities and that Perryville shall retain Entergy Louisiana to perform maintenance activities.

<sup>15</sup> Perryville Energy Partners, L.L.C. FERC Electric Tariff, Original Volume No. 2, Original Sheet No. 6.

<sup>16</sup> In support of their position, Perryville and Louisiana cite *Long Island Lighting Company*, 67 FERC ¶ 61,361 at 62,253, *reh'g denied*, 68 FERC ¶ 61,345 (1994), and *Puget Sound Power & Light Co.*, 64 FERC ¶ 61,335 (1993) (*Puget*).

informational purposes only<sup>17</sup> and to support their position that Occidental's concern about reciprocal dealing between Entergy Louisiana and Perryville is misplaced. Perryville and Entergy Louisiana repeat their statement that Perryville will employ Entergy Louisiana to perform directed maintenance of the facilities, and that Entergy Louisiana would perform this work under the exclusive control and direction of Perryville.<sup>18</sup>

27. We are persuaded by the arguments of Entergy Louisiana and Perryville that Perryville will retain control of the Interconnection Facilities, and that any maintenance Entergy performs will be under the direction of Perryville. Our review of the Maintenance Agreement between Entergy Louisiana and Perryville does not change this conclusion. This agreement contains no language that would suggest that Perryville will not retain control of the Interconnection Facilities. As noted, Perryville and Entergy point to provisions in the Transmission Service Agreement that obligate Perryville and limit the rights of Entergy Louisiana. The Commission expects that Entergy Louisiana and Perryville will abide by the terms of the Transmission Service Agreement, which specifies that Perryville will retain control and decision-making authority over the Interconnection Facilities.

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<sup>17</sup> Perryville and Entergy Louisiana state that by including the Maintenance Agreement as Attachment A to their Answer, Entergy Louisiana and Perryville do not concede that the Maintenance Agreement must be filed with the Commission. Perryville and Entergy Louisiana argue that under the Maintenance Agreement, Entergy Louisiana neither has operational control, nor decision making authority over the Interconnection Facilities. Similarly, Perryville and Entergy Louisiana contend that the factors that the Commission relied on in disclaiming jurisdiction over the O&M Agreement in *Puget* are present here. Specifically, Perryville and Entergy Louisiana contend that the maintenance work is routine in nature. Perryville and Entergy Louisiana argue that Entergy Louisiana will act only as agent or contractor of Perryville, and the maintenance charge is *de minimis* and fixed for the contract term. *See Puget* at P 63,427-28. Finally, Perryville and Entergy Louisiana state that for these reasons and consistent with prior rulings, the Maintenance Agreement between Entergy Louisiana and Perryville need not be filed with the Commission.

<sup>18</sup> On March 3, 2005, in its limited response to Perryville and Entergy Louisiana's answer, Occidental states that Perryville and Entergy Louisiana's answer mischaracterizes Occidentals' citation to deposition testimony given by Entergy witness in the Louisiana Commission proceedings related to the Perryville acquisition. Occidental contends that the Entergy witness in the LPSC proceedings was uncertain how Perryville would maintain ultimate control over the Interconnection Facilities.

**D. Requirement to file a *Pro Forma* Generator Interconnection Agreement**

28. Under the agreements negotiated by Perryville and Entergy Louisiana, once the Perryville generator is sold to Entergy Louisiana, Perryville will provide transmission delivery service to Entergy over the Interconnection Facilities. Calpine argues that Entergy Louisiana must explain why it should be exempt from the requirements to file a *pro forma* generator interconnection agreement under Order Nos. 2003 and 2003-A.

29. Tractebel states that the filings by Entergy Louisiana and Perryville in Docket Nos. ER05-188-000 and ER05-191-000 attempt to establish an arrangement in which the Perryville generator will not be subject to the same generator imbalance penalties and regulation service charges/penalties that are or will be imposed upon the other generating units connected to the Entergy transmission system.<sup>19</sup> Tractebel states that such an arrangement must not be permitted to bestow upon an affiliated generator benefits or lack of onerous terms and conditions that are not available to third-party generators. Tractebel also states that the Commission should require Entergy and Perryville to submit a *pro forma* generator interconnection agreement. Tractebel suggests that Perryville could amend the Transmission Service Agreement with the Entergy Louisiana-owned Perryville Generating facility to recoup any imbalance penalties or regulation service charges incurred by Perryville. Finally, Tractebel argues that Entergy should not be able to avoid charges simply by interposing a third party interconnection between its transmission system and an Entergy-owned generating source.

30. In its answer to these comments, Entergy Louisiana states that the *pro forma* generator interconnection agreement is not applicable to the Entergy Louisiana/Perryville interconnection because Perryville will not own any generating facility. Entergy Louisiana contends that the Interconnection Agreement is akin to a utility-to-utility interconnection agreement, not a generator interconnection agreement.<sup>20</sup> It also says that Tractebel's argument that the Perryville generator must be subject to generator imbalance penalties and regulation service charges is misplaced, as the Entergy Operating Companies self-supply generator imbalance and generator regulation services. Entergy Louisiana also states that Tractebel's suggestion that the Transmission Service Agreement could be amended so that Perryville could recover any imbalance charges is nonsensical, as Perryville will not own generation and will not be able to remedy imbalances.

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<sup>19</sup> Entergy's June 1, 2004 filing to implement Generator Regulation Service and to modify existing Generator Imbalance Agreement (Docket No ER04-901) is still pending and is subject to ongoing settlement efforts before Settlement Judge William Cowan. *See* November 23, 2004 Report of Settlement Judge William Cowan.

<sup>20</sup> *See Dayton Power & Light Company*, 107 FERC ¶ 61,195 (2004).

31. We are satisfied that an Order No. 2003 styled *pro forma* generator interconnection agreement is not necessary in this case since Perryville will not own any generation facilities and a new generator is not being interconnected. We are also satisfied with Entergy Louisiana's explanation as to why Perryville should not be subject to generator imbalance and regulation service charges.<sup>21</sup> As Entergy Louisiana explains in its response to the staff deficiency letter, Entergy Operating Companies self-supply generator imbalance service and the Perryville generator will be among the resources used in that self-supply.

**E. Justness and Reasonableness of Transmission Service Charge**

32. With regard to the transmission delivery charge under the Transmission Service Agreement, Perryville states that it intends to charge Entergy Louisiana a monthly levelized fixed rate, that is, the rate does not vary based on actual usage. The proposed charge is \$94,254/month, based on a levelized revenue requirement of \$1,131,045 per year.

33. In the response to the deficiency letter, Perryville provides cost support to justify the projected book value as of July 31, 2005, of \$7,903,564.95, general and administrative allocations including property insurance expense of \$24,895, audit expense of \$15,501 and overhead expense of \$37,067. Perryville also provides operations and maintenance expenses of \$25,000, which includes oil testing and purification (\$12,500), protective electric testing (\$9,000), and routine maintenance (\$3,500). Finally, Perryville submits an inflation factor of 3 percent.

34. This filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that Perryville's proposed transmission service may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed Transmission Service Agreement for filing, make it effective on the date the sale of the Perryville generator becomes effective, suspend it for a nominal period, and set it for hearing judge procedures.

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<sup>21</sup> In the response to the staff letter, Entergy Services stated that the Perryville generator would not be subject to the pricing provisions of Entergy's Standard Generator Imbalance Agreement.

## F. Waiver of Order Nos. 888 and 889 Requirements

35. In its protest of the Transmission Service Agreement in Docket No. ER05-191-000, Occidental argues that Perryville has failed to justify any waiver from the requirements of Order Nos. 888 and 889. Occidental states that Perryville's claim that the facilities are limited and discrete ignores its status as a de facto affiliate of Entergy Louisiana. In addition, Occidental states that Perryville has received a request for transmission service from Entergy Louisiana.

36. The Commission agrees with Perryville that it qualifies for waiver of the filing requirements of Order Nos. 888 and 889. However, we will require Perryville to file an OATT at the point that it begins to provide transmission service to Entergy. In *Black Creek Hydro*,<sup>22</sup> the Commission waived the Order No. 888 requirement to file a *pro forma* tariff for public utilities that showed they owned, operated, or controlled only "limited and discrete" transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service.<sup>23</sup> All such waivers are subject to the conditions that if the public utility receives a request for transmission service, it must file with the Commission a *pro forma* tariff within 60 days of the date of the request.<sup>24</sup> Here, Perryville is requesting waiver for its Interconnection Facilities that link Entergy Louisiana's generation facility to the Entergy grid. Perryville does not own other transmission facilities. This meets the "limited and discrete" standard for waiver of the Order 888 filing requirements. Accordingly, we will grant this waiver request.

37. Waiver of Order No. 888 is subject to the requirement that should a public utility receive a request for transmission service, the utility must file with the Commission a *pro forma* tariff within 60 days of the date of such a request, and must comply with any additional requirements that are effective on the date of the request.<sup>25</sup> Order No. 888 requires a public utility to file an OATT upon receiving any request for transmission. Therefore, Perryville must comply with this Commission requirement within 60 days of receiving a request from Entergy Louisiana, or any other customer, for transmission service. Waiver of Order No. 889 may remain in effect until a finding by the

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<sup>22</sup> *Black Creek Hydro*, 77 FERC ¶ 61,232 (1996) (*Black Creek*).

<sup>23</sup> *Id.* at 61,941. See also *Golden Spread Electric Cooperative, Inc.*, 106 FERC ¶ 61,151 (2004).

<sup>24</sup> *Black Creek*, 77 FERC ¶ 61,941.

<sup>25</sup> *Id.*

Commission that a potential customer evaluating its transmission needs cannot get necessary information to complete its evaluation.<sup>26</sup>

### **G. Waiver of Other Filing Requirements**

38. In its November 5, 2004 filing of the Transmission Service Agreement, Perryville also requests waiver of other Commission regulations. These include the requirement under section 35.12 to provide a comparison with other rates. Perryville states that it has no other rates for interconnection or transformation services. Perryville also requests waiver of the requirement under section 35.12 to provide a map or single line diagram since it states that no facilities are being installed or modified. Perryville also requests waiver of Part 101 of the Commission's regulations regarding the Uniform System of Accounts, stating that it would be burdensome and costly to comply for interconnection services provided to only one customer over minimal facilities. Perryville also requests waiver of certain requirements under Part 358 of the Commission's regulations if the Commission decides that the service provided under the Transmission Service Agreement is transmission service. Perryville states that all of the information required by Part 358 with respect to Perryville as a transmission provider will be posted on Cleco's website consistent with the Statements of Policy and Codes of Conduct filed by Cleco in compliance with a Stipulation and Consent Agreement between Cleco and the Commission's Division of Enforcement in the Office of Market Oversight and Investigations. The Commission hereby grants the requested waivers while also noting that Perryville has already filed the single line diagram in response to the staff deficiency letter.

#### **The Commission Orders:**

(A) The Commission accepts the Notice of Termination of the IOA and the GIA between Entergy Louisiana and Cleco in Docket No. ER05-189-000. The Commission also accepts the Interconnection Agreement filed by Entergy Louisiana in Docket No. ER05-188-000, to become effective as of the date of the sale of the Perryville generator. The Commission accepts for filing the Transmission Service Agreement filed in Docket No. ER05-191-000, suspends it for a nominal period subject to refund, to become effective as of the date the sale of the Perryville generator facility becomes effective.

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<sup>26</sup> *Id.*

(B) The Commission hereby grants Perryville's request for waivers of the requirements of Order Nos. 888 and 889, as discussed in the body of this order. However, Perryville is hereby directed to file an OATT under Order No. 888 at the time that it receives a request for transmission service.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates for transmission service filed in Docket No. ER05-191-000.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.